



UNITED NATIONS DISPUTE TRIBUNAL

---

Case No.: UNDT/NBI/2017/014

Judgment No.: UNDT/2017/050

Date: 28 June 2017

Original: English

---

**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

HAYDAR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT ON RECEIVABILITY**

---

**Counsel for the Applicant:**

Edwin Nhliziyo

**Counsel for the Respondent:**

Nicole Wynn, ALS/OHRM

Paulos Weldesellasie, ALS/OHRM

## **Introduction**

1. The Applicant is serving as a Supply Officer at the P-3 level with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA).

## **Procedural history**

2. The Applicant filed an application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi on 23 February 2017. The Applicant's counsel initially filed the application erroneously under his name in the e-Filing portal (CCMS) thus the UNDT Registry in Nairobi (the Registry) was unable to serve the application until CCMS Support corrected the error on 1 March 2017. The application was served on the Respondent on 2 March 2017.

3. The Respondent informed the Registry on 3 March 2017 that three annexes indicated in Section X of the application as supporting documents had not been filed with the application.

4. By emails dated 7 and 10 March 2017, the Registry wrote to the Applicant requesting that she complete her application by uploading the missing annexes into CCMS. The Applicant neither responded to the emails nor complied with the request to complete her application.

5. The Tribunal, by its Order No. 068 (NBI/2017) dated 21 March 2017, ordered the Applicant to file all of the missing annexes by 28 March 2017 and informed her that a failure to submit proof of a request for management evaluation by 28 March 2017 would result in her application being dismissed for non-compliance. The Tribunal temporarily suspended the Respondent's deadline for filing a reply.

6. The Applicant complied with Order No. 068 on 28 March 2017.

7. The amended application was served on the Respondent on 7 April 2017 with a deadline of 10 May 2017 for a reply.

8. On 3 May 2017, the Respondent filed a motion to have receivability determined as a preliminary matter. He requested leave and filed a reply on receivability. He also requested a suspension of the 10 May deadline for the filing of his reply on the merits of the application pending the Tribunal's determination on his motion.

9. By email dated 10 May 2017, the Registry informed the parties of the

15. On the same day, Mr. Buckley responded to the Applicant's email. He clarified that: (i) as a P-5 officer, Mr. Lewyllie was nominally his deputy who had full authority to act on his behalf by tasking and monitoring IWH staff; (ii) Mr. Lewyllie had changed the venue of the brainstorming session to the MINUSCA premises upon receipt of the Applicant's request; (iii) the Applicant did have a reporting line to Mr. Lewyllie; (iv) he had had occasion to caution the Applicant about her attitude but it had had no effect on her; and (v) he had received complaints regarding the Applicant's attitude and general behavior from her supervisor and several IWH staff. In light of the foregoing, Mr. Lewyllie

her credibility. She ended her email by saying she was simply asking for “due process, mutual respect and an end to the harassment”.

19. On the same day, Mr. Buckley responded to the Applicant’s email. He explained, *inter alia*, that the Applicant was the one alleging professional harassment and expressed his support for an investigation into her allegations. He explained that while several IWH staff members had complained about the Applicant, only two had submitted written complaints but the IWH supervisor had failed to act on them. He indicated that he was attaching copies of the complaints to his email.

20. The DMS, by a memorandum dated 29 April 2016, informed the

25. On 23 November 2016, the Applicant submitted a request for management evaluation against the Rebuttal Panel report of 24 August 2016 and the procedures followed by the Rebuttal Panel.

26. On 25 and 29 November 2016, MEU responded to the Applicant's requests of 22 October and 23 November. MEU informed her that her requests were not receivable because there were no reviewable administrative decisions.

### **Issues**

27. The only issue for determination here is whether the application is receivable pursuant to articles 2.1(a) and 8.1 of the UNDT Statute.

### **Considerations**

28. The Respondent contends that the application is not receivable *rationae materiae* because the Applicant failed to identify any administrative decisions within the meaning of art. 2.1(a) of the UNDT Statute. The Respondent submits that the "vague and disorganized fashion" in which the application is presented deprives him of notice of the administrative decisions being challenged and undermines his ability to reply meaningfully.

29. For its part, the unwieldy nature of this application leaves the Tribunal with no choice but to go back and review article 2.1(a) of the UNDT Statute. This article provides that the Tribunal is competent to hear and pass judgment on applications appealing an *administratipQ q BT /F1 d Q q BT /F494T Q qg 0.0 0.0 0.09(d)*

A unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. ... Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application and they carry direct legal consequences.

This definition has been endorsed repeatedly by the United Nations Appeals Tribunal (the Appeals Tribunal) in its jurisprudence.<sup>1</sup>

31. In stating her case, the Applicant describes the contested decisions as follows in her application:

- a. “A wall of silence” regarding “misrepresentations” made to MEU and subsequently transmitted to UNDT;
- b. The delay in releasing to her the results of an investigation into the circumstances leading to her reassignment in 2016;
- c. The absence of any meaningful investigation/fact finding into the hostile work environment she is forced to work in and corrective measures to address the issue;
- d. The Secretary-General’s failure to take action against MINUSCA managers for engaging in prohibited conduct and to protect her rights as a staff member;
- e. The Secretary-General’s persistent failure to take action against managers who have engaged in prohibited conduct has resulted in her losing her right to be treated with dignity and to work in an environment that is free from discrimination, harassment and abuse under paragraph 2.1 of ST/SGB/2008/5.
- f. The Secretary-General’s dereliction of his duty to act has allowed the MINUSCA managers to act with impunity and to use underhanded means to accomplish their goals. MINUSCA managers have abused their office

---

<sup>1</sup> *Tabara* 2010-UNAT-030; *Tintukasiri* 2015-UNAT-526; *Kazazi* 2015-UNAT-557



Administration's response to a request for management evaluation is not a reviewable decision. The response is an opportunity for the Administration to resolve a staff member's grievance without litigation – not a fresh decision.

36. In light of the fact that the Administration's response to a request for management evaluation is not a reviewable administrative decision, the Tribunal could proceed to dismiss the application at this juncture but it will not do so. To ensure that each of the contentions raised by the Applicant in her application as administrative decisions is properly interred, the Tribunal will examine them.

*a. The wall of silence*

37. The Applicant submits that during the rebuttal process, there were revelations that convinced her that there was a "conspiracy to underrate her performance" and that her concerns were deepened when months later she was reassigned to the Supply Section.

38. In *Reid* 2014-UNAT-419<sup>2</sup>, the Appeals Tribunal concluded that the Dispute Tribunal correctly found that the applicant failed to identify a reviewable administrative decision in that he failed to identify a specific decision which had a direct and adverse impact on his contractual rights.

39. The Tribunal finds that the Applicant's submission that "it is this wall of silence she is going against" is nothing but a general averment comprised of an unsubstantiated allegation of a conspiracy to underrate her performance on the one hand and her concerns about her temporary reassignment to the Supply Section on the other. She does not provide any details regarding the conspiracy or any causal link between the conspiracy and her temporary reassignment. Similar to *Reid*, the Applicant in the current case has failed to identify a specific decision that had a direct and adverse impact on her contractual rights.

40. In light of the foregoing, the Tribunal concludes that this claim is not receivable because the Applicant has failed to identify an administrative decision within the meaning of art. 2.1(a) of the UNDT Statute.

---

<sup>2</sup> See also *Planas* 2010-UNAT-049.

*b. The delay in releasing the results of an investigation into the Applicant's reassignment in 2016*

41. The Applicant avers that there was supposed to be an investigation regarding the circumstances that led to her reassignment in 2016 but a year later, the results of this investigation have still not been released to her.

42. The Tribunal notes that although the Applicant requested protection from professional harassment after Mr. Lewyllie allegedly insulted her on 22 April 2016, she never requested an investigation into the circumstances surrounding her reassignment.

43. The Tribunal finds that the 29 April 2016 reassignment memorandum from Mr. Trojanovic clearly stated the reason for the reassignment, which was to give the Mission an opportunity to resolve her 22 April 2016 allegation of professional harassment against Mr. Lewyllie.

44. Further, the Applicant filed an application for suspension of action with the Tribunal on 3 May 2016<sup>3</sup>, under art. 2.2 of the UNDT Statute, seeking suspension of the decision to temporarily reassign her to the Supply Unit during the pendency of the investigation. Upon receipt of the Respondent's reply, the Tribunal gave the Applicant an opportunity to provide additional comments but she did not do so. Consequently, the Tribunal dismissed the application on 10 May after the Respondent undertook to suspend implementation of the contested decision.<sup>4</sup>

45. The Applicant then filed a motion for extension of time to file an application on 17 August 2016. This motion was registered as Case No. UNDT/NBI/2016/063. She described the contested decision as the decision to temporarily reassign her from IWH to the Supply Unit "under false pretenses".

46. The Tribunal refused her motion on 1 September 2016 by Order No. 426 (NBI/2016) on the basis that the administrative decision to temporarily reassign her had been taken, its content was sufficiently clear and inasmuch as the

---

3

reassignment was of a temporary nature, the decision was final. Thus, the Applicant was in a position at that time to contest it.

47. In light of the fact that the said motion contained most of the information required by art. 8.2 of the UNDT Rules of Procedure, the Tribunal deemed it to be an incomplete application and instructed the Applicant to supplement her submission with the actions/remedies sought and supporting documentation by 15 September 2016. The Tribunal informed the Applicant that if she failed to comply with the 15 September 2016 deadline, her application would be dismissed.<sup>5</sup>

48. By Order No. 444 (NBI/2016) dated 29 September 2016, the Tribunal struck out Case No. UNDT/NBI/2016/063 because the Applicant failed to supplement her application on 15 September 2016 as ordered.

49. Since the Applicant did not request an investigation specifically into her reassignment and also failed to prosecute her case before the Tribunal on t[( )]pTm [( )] TJ ET2

50. The Tribunal has decided to consider these four claims as one for the sole reason that although they are phrased in different ways by the Applicant, the claims are one and the same. Simply put, the Applicant's claim is that the Respondent failed to conduct an investigation into her allegation of a hostile work environment and that this failure has violated her right to work in an environment free from discrimination, harassment and abuse of authority.

51. The first question here is whether the Respondent's alleged failure to conduct an investigation into the Applicant's allegation of a hostile work environment is an administrative decision.

52. In *Tabari* 2010-UNAT-030, the Appeals Tribunal held that "not taking a decision is also a decision".

53. Similarly, in *Nwuke* UNDT/2010/017, the applicant requested that the Dispute Tribunal, *inter alia*, compel the Administration to investigate his complaints of discrimination against senior management of the Economic Commission for Africa and order the Administration to treat him in a proper, non-discriminatory way and refrain from retaliation against him. The Dispute Tribunal held that the applicant did not contest an administrative decision and dismissed his application as irreceivable.

54. In *Nwuke* 2010-UNAT-099, the Appeals Tribunal held in relevant part that:

26. When a staff member files a complaint and makes accusations about administrative violations of law, the Administration can exercise its discretion and decide whether or not to undertake an (at least preliminary or summary) investigation. The investigation into management and administrative practices in general or into disciplinary cases is a matter within the discretion of the Administration. But that does not mean that the administrative decision to undertake, or not to undertake, an investigation cannot be subject to judicial review. Whether or not the UNDT may review such a decision depends on whether it falls into the UNDT's jurisdiction pursuant to Article 2(1) of the UNDT Statute.

...

30. A staff member

Regulations and Rules. In such cases, it would be covered by the terms of appointment and entitle the staff member to pursue his or her claim even before the UNDT, and, after review, the Tribunal could order to conduct an investigation or to take disciplinary measures.

...

55. The Appeals Tribunal concluded that Mr. Nwuke had in fact challenged an

followed by the Administration after a request for investigation, and to decide if it was taken in accordance with the applicable law. The UNDT can also determine the legality of the conduct of the investigation.

59. Accordingly, the Tribunal finds and holds that the absence of an investigation into the Applicant's allegation of a hostile work environment is an administrative decision.

60. The Tribunal will now consider whether this claim is receivable.

61. The submission of a request for management evaluation is a mandatory first step that must be followed before an applicant may have recourse to the

## **Judgment**

66. The application is not receivable.

## **Observations**

67. On 17 February 2017, the Applicant filed an application for suspension of action to the Tribunal seeking suspension of the MINUSCA's decision to transfer the Supply Section from the Service Delivery Service to the Supply Chain Management Service and the new functions assigned to her in that arrangement. This application was registered as Case No. UNDT/NBI/2017/011. The Tribunal, in its Order No. 045 (NBI/2017), noted that the Applicant had sought management evaluation of this issue twice, on 28 December 2016 and 16 February 2017, and had received responses from the Management Evaluation Unit (MEU) on 15 February 2017 and 17 February 2017, respectively. Since the Applicant had already received responses from MEU, the Tribunal refused her application.

68. With regard to the multiplicity of inarticulate applications that have been filed before this Tribunal on behalf of the present Applicant by the same legal counsel, the Tribunal needs to reiterate here that it is committed to dealing with genuine applications that come to it with a view to granting necessary reliefs to wronged and diligent applicants.

69. It is expected at all times that all applicants, especially those who have legal representation, present their applications with a good degree of articulation and a high sense of responsibility. This Tribunal is properly set up by law and has legal parameters for the applications it entertains. It is therefore not the forum for presenting soap box speeches and for making vague and insubstantial claims.

70. This Tribunal is a court of law and therefore it is the duty of the Applicant's counsel to properly school himself/herself in the relevant laws, procedures and processes before approaching this Tribunal. So far in a good number of his applications here, counsel's *modus operandi* appears to simply be



Entered in the Register on this 28<sup>th</sup> day of June 2017

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi